4. Payment (§ 38*)—Application of Payments.—What is deemed an unreasonable delay in the application by the creditor, as authorized by the debtor, of money turned over to it in payment of the debtor's indebtedness is to be determined by the particular circumstances of the case.

[Ed. Note.—For other cases, see Payment, Cent. Dig. §§ 99-103; Dec. Dig. § 38.* 11 Va.-W. Va. Enc. Dig. 121.]

Error to Circuit Court, Culpeper County.

Action by the Culpeper National Bank of Culpeper, Va., Incorporated, against Walter & Walter. Judgment for plaintiff for a less amount than claimed, and it brings error. Reversed.

Grimsley & Miller, of Culpeper, for plaintiff in error.

Gibson & Nottingham and *Waite, Perry & Jeffries,* all of Culpeper, for appellee.

SOUTHERN RY. CO. *v.* BAPTIST.

March 13, 1913.

[77 S. E. 477.]

1. Railroads (§ 320*)—Highway Crossings—Duty to Travelers.—The rule that, when railroad employees in charge of a train discover a person near the track or approaching a crossing, they may assume that he will not go upon the track immediately ahead of the approaching train does not apply where there is anything to suggest that he will not remain in a place of safety until the train has passed, as where plaintiff was struck by a train while holding an unmanageable horse by the bridle in an attempt to keep him from going upon the track.

[Ed. Note.—For other cases, see Railroads, Cent. Dig. §§ 1014-1016, 1019; Dec. Dig. § 320.* 4 Va.-W. Va. Enc. Dig. 130; 14 Va.-W. Va. Enc. Dig. 293; 15 Va.-W. Va. Enc. Dig. 245.]

2. Railroads (§ 350*)—Injury to Person at Crossing—Jury Question—Contributory Negligence.—In an action against a railroad company for injury to plaintiff, who was struck by a train while attempting to prevent an unmanageable horse, driven by another, from going on the track, whether plaintiff was guilty of contributory negligence in imperiling himself to save another, even if such act could be the basis of contributory negligence, held, under the evidence, a jury question.

[Ed. Note.—For other cases, see Railroads, Cent. Dig. §§ 1152-1192; Dec. Dig. § 350.* 4 Va.-W. Va. Enc. Dig. 143; 14 Va.-W. Va. Enc. Dig. 300; 15 Va.-W. Va. Enc. Dig. 245.]

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*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.

3. Evidence (§ 539½*)—Expert Opinions—Locomotive Engineering.—In an action against a railroad company for injury to a person struck at a crossing, a witness sufficiently qualified himself to testify to the distance within which the train could have been stopped by showing that he was a locomotive engineer with nine years' experience and familiar with the use of air brakes, the scene of the accident, the curvature of the grade, and other surrounding details; the engineer in charge of the train having testified as to the make-up of the train, its condition, its air brake equipment, and its speed.

[Ed. Note.—For other cases, see Evidence, Cent. Dig. §§ 2350-2352; Dec. Dig. § 539½.* 5 Va.-W. Va. Enc. Dig. 785; 14 Va.-W. Va. Enc. Dig. 436; 15 Va.-W. Va. Enc. Dig. 387.]

4. Appeal and Error (§ 1051*)—Harmless Error—Admission of Evidence.—In an action against a railroad company for injuries to a person struck at a crossing, any error in permitting a witness to give an opinion as to the distance within which the train might have been stopped was harmless to defendant, where the engineer in charge of the train testified that it could have been stopped in a distance less than that at which plaintiff's peril was discovered.

[Ed. Note.—For other cases, see Appeal and Error, Cent. Dig. §§ 4161-4170; Dec. Dig. § 1051.* 1 Va.-W. Va. Enc. Dig. 592; 14 Va.-W. Va. Enc. Dig. 92; 15 Va.-W. Va. Enc. Dig. 68.]

5. Appeal and Error (§ 1033*)—Right to Complain—Favorable Instructions.—In an action against a railroad company for injury to plaintiff, who was struck at a crossing while attempting to prevent an unmanageable horse, driven by another, from going on the track, any error in an instruction that, if plaintiff acted with reasonable prudence, and was thereby placed in a dangerous position known to the enginemen in time, by the use of ordinary care on their part, to have avoided injuring him, etc., and they failed to use reasonable care to use the means at hand, consistent with the safety of those upon the engine and train, and defendant's property, to avoid injuring plaintiff, and if such negligence caused plaintiff's injury, he could recover, was favorable to defendant, since defendant's employees were bound to use such care to avoid injuring plaintiff after discovering his peril, though he did not act with reasonable prudence in going to the assistance of the driver of the horse.

[Ed. Note.—For other cases, see Appeal and Error, Cent. Dig. §§ 4052-4062; Dec. Dig. § 1033.* 1 Va.-W. Va. Enc. Dig. 600; 14 Va.-W. Va. Enc. Dig. 96; 15 Va.-W. Va. Enc. Dig. 70.]

6. Trial (§ 253*)—Instructions—Refusal—Instructions Ignoring Evidence.—In an action against a railroad company for injury to plaintiff, who was struck at a crossing while attempting to prevent

*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.

an unmanageable horse, driven by another, from going on the track, instructions which ignored evidence that plaintiff was in a peril from which he could not extricate himself by loosening his hold, through danger of being trampled upon by the horse, and ignoring evidence that the train could have been stopped after discovery of plaintiff's peril, were properly refused to defendant.

[Ed. Note.—For other cases, see Trial, Cent. Dig. §§ 613-623; Dec. Dig. § 253.* 7 Va.-W. Va. Enc. Dig. 723; 14 Va.-W. Va. Enc. Dig. 564; 15 Va.-W. Va. Enc. Dig. 515.]

Error to Circuit Court, Halifax County.

Action by S. G. Baptist against the Southern Railway Company. Judgment for plaintiff, and defendant brings error. Affirmed.

William Leigh, of Danville, for plaintiff in error.

Booker & McKinney, of Houston, and *Lee & Kemp,* of Lynchburg, for defendant in error.

Ex parte SETTLE.

March 15,. 1913.

[77 S. E. 496.]

1. Statutes (§ 93*)—General and Special Laws—Trial Justices.—Acts 1912, c. 347, which provides for trial justices in all counties having a population greater than 300 inhabitants per square mile, is not violative of Const. 1902, § 63 (Code 1904, p. ccxxiii), prohibiting special or class legislation, though it applies only to one county; the fact that a law applies only to certain territorial districts not rendering it unconstitutional, where it applies to all parts of the state where like conditions exist.

[Ed. Note.—For other cases, see Statutes, Cent. Dig. § 102; Dec. Dig. § 93.* 3 Va.-W. Va. Enc. Dig. 169; 14 Va.-W. Va. Enc. Dig. 231.]

2. Evidence (§ 23*)—Judicial Notice—Local Conditions.—Judicial notice may be taken of the fact that by reason of the proximity of the county of Alexandria to large centers of population there is need that special provision be made whereby the law may be efficiently and promptly administered to protect its citizens from lawless elements.

[Ed. Note.—For other cases, see Evidence, Cent. Dig. §§ 29, 30; Dec. Dig. § 23.* 8 Va.-W. Va. Enc. Dig. 633; 14 Va.-W. Va. Enc. Dig. 611; 15 Va.-W. Va. Enc. Dig. 569.]

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*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.